

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BENJAMIN ESPINOSA,

Plaintiff

Case No. 2:23-cv-00125-GMN-BNW

ORDER

v.

CALVIN JOHNSON, et al.,

Defendants

I. DISCUSSION

On January 30, 2023, the Court issued an order denying Plaintiff's application to proceed *in forma pauperis* because it was incomplete. (ECF No. 3). Plaintiff did not file an application on this Court's approved form and did not include a financial certificate and an inmate trust fund account statement for the previous six-month period with the application. (*Id.*) The Court gave Plaintiff an opportunity to correct these deficiencies by March 27, 2023. (*Id.*)

In response, Plaintiff filed a motion for reconsideration (ECF No. 4) stating that he filed a kite and tried several times to attain a six-month account statement and a financial certificate but nobody in inmate accounting has sent him those documents. (*Id.* at 3).

A motion to reconsider must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The Court denies the motion for reconsideration because the Court did not commit clear error in its prior order. Plaintiff still has not filed an application to proceed *in forma*

1 *pauperis* on this Court's approved form. Additionally, Plaintiff's kite is from October 30,
2 2022, and he initiated this case on January 24, 2023. (ECF No. 1 at 7). The Court
3 acknowledges that, on October 31, 2022, the prison staff responded that inmate banking
4 was short staffed. (*Id.*) Although Plaintiff states he has not received the documents he
5 needs, he needs to try again to acquire his financial certificate and inmate accounting
6 statement. The Court grants Plaintiff until May 12, 2023, to file a fully complete application
7 to proceed *in forma pauperis* on this Court's approved form.

8 **II. CONCLUSION**


9 **IT IS THEREFORE ORDERED** that the motion for reconsideration (ECF No. 4) is
10 denied.

11 **IT IS FURTHER ORDERED** that Plaintiff has until May 12, 2023, to either pay the
12 full \$402 filing fee or file a new fully complete application to proceed *in forma pauperis*
13 with all three required documents: (1) a completed application with Plaintiff's two
14 signatures on page 3, (2) a completed financial certificate that is signed both by Plaintiff
15 and the prison or jail official, and (3) a copy of Plaintiff's trust fund account statement for
16 the previous six-month period.

17 Plaintiff is cautioned that this action will be subject to dismissal without prejudice if
18 he fails to timely comply with this order. A dismissal without prejudice allows Plaintiff to
19 refile the case with the Court, under a new case number, when Plaintiff can file a complete
20 application to proceed *in forma pauperis* or pay the required filing fee.

21 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to send Plaintiff
22 the approved form application to proceed *in forma pauperis* for an incarcerated person
23 and instructions for the same.

24
25 DATED: April 4, 2023.

26 
27 BREND A WEKSLER
28 UNITED STATES MAGISTRATE JUDGE